

(b) all determinations made or conclusions reached.

38. Describe and identify all documents relating to the responses to Interrogatories 36 and 37.

39. Describe the circumstances and identify the information relating to all decisions by the Bureau, or any other part of the FCC, to cause Mr. Loginow or any other member of the Commission's staff to conduct any investigation or any testing relating to the Proceeding.

40. Describe all actions taken to conduct any investigation or testing relating to the Proceeding.

41 Identify and describe, or in the alternative provide access for copying, all documents relating to the response to Interrogatory 41.

42. Identify all staff members of the FCC other than Mr. Loginow who have knowledge of any investigation or testing related to the Proceeding, even if such knowledge may not be considered "personal knowledge."

43. Describe and identify all communications, either oral or written, between Mr. Loginow, and any other member of the FCC's staff with knowledge ("personal knowledge" or otherwise) of investigations or testing related to the Proceeding, and Universal Broadcasting of New York, Inc., and/or any representative or employee of Universal Broadcasting of New York, Inc., relating to the Proceeding.

44. Specifically with respect to Mr. Loginow's activities on July 31, 1995, describe exactly what was done to monitor Jukebox Radio, and/or WMG499, and/or W276AQ, Fort Lee, New Jersey, and/or W232AL, Pomona, New York and/or the Monticello Station, including, but not limited to:

- (a) what equipment was used
- (b) how was such equipment used, including tuning and power levels
- (c) what observations were made
- (d) from what location(s) was monitoring conducted.

45. Describe why “..audio quality of the Fort Lee NJ translator signal, however, indicated that the input signal was NOT off air from Pomona NY...”, including what equipment, means or techniques were used to reach such a conclusion.

46. Describe how audio quality was compared with respect to observations in April 1995 and July 1995.

47. Specifically with respect to Mr. Loginow’s activities on August 2, 1995:

- (a) identify and describe every item of equipment observed at both FM translators
- (b) for each such item of equipment, describe all observations, conclusions or determinations related to them
- (c) describe how Mr. Turro demonstrated off air reception of the Pomona FM translator by the Fort Lee FM translator while at the Fort Lee FM translator
- (d) describe how Mr. Turro demonstrated off air reception of the Monticello Station by the Fort Lee FM translator while at the Fort Lee FM translator
- (e) describe how Mr. Turro demonstrated off air reception of the Pomona FM translator by the Fort Lee FM translator while at the Pomona FM translator
- (f) describe all filters observed at the Fort Lee FM translator or the Pomona FM translator

48. Describe, identify and define “high quality audio.”

49. Describe, identify and define “very high quality audio.”

50 Describe, identify and define "moderately good audio."

51. Specifically with respect to Mr. Loginow's activities on April 13 and 14, 1995:

(a) describe how the Fort Lee FM translator was determined to be receiving programming off the air from the Pomona FM translator

(b) describe how the Pomona FM translator was determined to be receiving programming off the air from the Monticello Station

(c) describe and identify the operating power of the Monticello Station

(d) describe all items of equipment observed

(e) describe all inspections and testing undertaken

52. Specifically with respect to Mr. Loginow's activities on May 15, 1995:

(a) describe how and from where the Fort Lee FM translator was monitored

(b) describe and identify "audio quality was considered very high"

(c) describe how low level signals were transmitted, including, but not limited to, by what means such a signal was transmitted, on what frequency(ies), with what equipment, at what power

(d) describe the exact locations of all of the transmitting equipment

(e) describe the antenna type(s) being used

(f) describe the antenna polarization being used

53. Was August 2, 1995, the only day upon which Mr. Loginow, or any other member of the FCC's staff, closely and/or directly inspected the facilities and equipment at the Fort Lee and Pomona FM translators by entry into the enclosures to observe the transmitters, receivers, remote control and power apparatus (*i.e.* was August 2, 1995, the only day inspections and/or

observations were made which were not entirely from outside of those FM translators).

54. If any response to Interrogatory 53 is in the negative, identify all such days other than August 2, 1995, and describe how entry was obtained and what was observed.

55. Describe the circumstances by which Mr. Loginow obtained written statements from Vincent Luna and William Gaghan, including the date(s) such statements were received by Mr. Loginow, the conversations or understandings associated with the receipt of those statements, the means of the delivery of those statements, the purpose(s) offered or intended for those statements.

56. Describe what Mr. Loginow did with the statements provided by Mr. Luna and Mr. Gaghan, including any concurrent or subsequent discussions concerning them.

57. Describe all communications between Mr. Loginow and any representatives or employees of Universal Broadcasting of New York, Inc., including, but not limited to, Mr. Luna and Mr. Gaghan.

58. Describe and identify all other statements, whether written or spoken, from potential witnesses which were obtained by Mr. Loginow or any other member of the Commission's staff.

59. Describe the meaning and/or the intention of Mr. Loginow when, during the August 2, 1995 inspections, Mr. Loginow expressed the view to Mr. Turro that Mr. Turro's operations were not in trouble (*i.e.* not in material violation of FCC rules or policies) but the operations of Mr. Weis were.

60. Describe the instructions given to Mr. Loginow which initiated each of the investigations and/or observations related to the Proceeding.

61. Describe why the HDO makes no reference to Mr. Loginow's inspections and/or observations and/or conclusions and/or determinations concerning the Fort Lee translator and/or the Pomona translator and/or the Monticello Station with respect to the:

- (a) April 13 and 14, 1995, activities of Mr. Loginow
- (b) July 31, 1995, activities of Mr. Loginow
- (c) August 2, 1995, activities of M. Loginow.

Respectfully submitted,

GERARD A. TURRO

By: /s/ Alan Y. Naftalin
/s/ Alan Y. Naftalin

By: /s/ Charles R. Naftalin
/s/ Charles R. Naftalin

Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 467-5700

August 7, 1997

His Attorneys

CERTIFICATE OF SERVICE

I, Barbara Frank, a secretary in the law offices of Koteen & Naftalin, L.L.P., hereby certify that true copies of the foregoing "INTERROGATORIES OF GERARD A. TURRO TO SERGE LOGINOW, JR. AND THE MASS MEDIA BUREAU" have been served upon the following by first-class United States mail, postage prepaid, this 7th day of August 1997:

* The Honorable Arthur I. Steinberg
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 228
Washington, D.C. 20554

* Alan Aronowitz, Esq.
Hearing Branch
Enforcement Division
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

* Stephen Barone
Complaints and Investigations Branch
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8210
Washington, D.C. 20554

* Suzan B. Friedman
Federal Communications Commission
2025 M Street, N.W., Room 8210
Washington, D.C. 20554

James P. Riley, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, VA 22209

Roy R. Russo, Esq.
Richard A. Helmick, Esq.
Cohn and Marks
1333 New Hampshire Avenue
Suite 600
Washington, D.C. 20036

/s/ Barbara Frank
Barbara Frank

* By Hand Delivery

TURRO EXHIBIT NO. 23

CNbf 161-100
STAMP & RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re)
)
GERARD A. TURRO)
)
For Renewal of License)
For FM Translator Stations)
W276AQ(FM), Fort Lee, NJ, and)
W232AL(FM), Pomona, NY)
)
MONTICELLO MOUNTAINTOP)
BROADCASTING, INC.)
)
Order to Show Cause Why the)
Construction Permit for FM Radio)
Station WJUX(FM), Monticello, NY,)
Should Not Be Revoked)

MM Docket No. 97-122

File Nos. BRFT-970129YC
BRFT-970129YD

RECEIVED

AUG - 8 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**GERARD A. TURRO'S REQUEST TO
THE MASS MEDIA BUREAU FOR ADMISSIONS
OF FACT AND GENUINENESS OF DOCUMENTS**

Gerard A. Turro, by his attorneys, pursuant to Section 1.246 of the Commission's Rules, hereby submits his request to the Mass Media Bureau ("Bureau") for admissions of fact and genuineness of documents by the Bureau within ten days of the service of this request in the above-captioned proceeding.

Consistent with the Commission's Rules and the Bureau's own practice in this proceeding, each response shall be labeled with the same number as the subject admission request and shall be made under oath or affirmation by the person making the response. In addition, respondent is reminded that "[a] denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a

matter of which an admission is requested he shall specify so much of it as is true and deny the remainder.”

DEFINITIONS

A. "Document," for the purposes of these admissions, means the original and any nonidentical copy, and/or amendment thereof, of any letter, memorandum report, handwritten note, working paper, summary of data compilation sheet, interview report, record, bill, receipt, canceled check, order, audio, data and/or video, and/or electromagnetic, and/or optical, and/or tape recording, or any other handwritten, typed printed or graphic materials to which the Bureau or any of their agents or representatives have access.

B. With respect to any matter about which admissions are requested here and for which any claims of privilege or any other form of objection are asserted, provide the basis for such claim of privilege or objection.

C. "Person," for the purposes of these admission, means any legal or natural entity, including but not limited to corporations, partnerships, associations, firms, and their subsidiaries, principals, officers, directors, employees, subcontractors, agents and attorneys, persons, groups, collectives, cooperatives, governments and their subparts, including bureaus, offices, agencies, departments, branches, divisions, sections, boards, and commissions.

D. The phrases "relating to," or "related to," for purposes of these interrogatories, shall mean constituting, referring to, reflecting, describing, discussing, embodying, modifying, amending, altering, concerning, in connection with, or expanding upon.

E. "Proceeding," for purposes of these interrogatories, shall mean the FCC's MM Docket No. 97-122, File No. BRFT-970129YC, File No. BRFT-970129YD, Hearing Designation

Order, Order to Show Cause and Notice of Opportunity for Hearing, FCC 97-137 (released April 18, 1997) ("HDO"), and all matters referred to therein, including matters which preceded issuance of the HDO and initiation of MM Docket No. 97-122, File No. BRFT-970129YC and File No. BRFT-970129YD, including but not limited to any complaints or investigations concerning Mr. Turro and/or the broadcast stations of which he is the licensee and/or FM radio station WJUX, Monticello, New York, formerly WXTM (the "Monticello Station").

ADMISSIONS

1. Serge Loginow, Jr. is the only member of the Commission's staff with personal knowledge of matters related to the Proceeding.
2. Mr. Loginow conducted investigations and/or testing and/or made observations related to the Proceeding on April 13 and 14, 1995, May 15, 1995, July 31, 1995, and August 2, 1995.
3. Mr. Loginow conducted no investigations and/or testing and/or made observations related to the Proceeding other than on April 13 and 14, 1995, May 15, 1995, July 31, 1995, and August 2, 1995.
4. No member of the Commission's staff other than Mr. Loginow has ever conducted investigations and/or testing and/or made observations related to the Proceeding.
5. Complete and correct copies of all documents in existence authored by Mr. Loginow in conjunction with, or as a consequence of, his investigations and/or testing and/or observations related to the Proceeding, or obtained by Mr. Loginow and/or the Bureau which are related to the Proceeding have been produced to Mr. Turro in this Proceeding.
6. On April 13 and/or 14, 1995, Mr. Loginow determined that while WMG499 was transmitting between the Jukebox Radio studios in Dumont, New Jersey and W276AQ, Fort Lee,

New Jersey (the "Fort Lee translator"), the Fort Lee translator was receiving Jukebox Radio programming off the air from W232AL, Pomona, New York (the "Pomona translator") and that the Pomona translator was receiving Jukebox Radio programming off the air from the Monticello Station.

7. Mr. Loginow's determinations described in Admission 6 established that on April 13 and/or 14, 1995 the Fort Lee translator was receiving the signal of the Pomona translator "directly through space" as that term is used in Section 74.1231(b) of the Commission's Rules, 47 CFR Section 74.1231(b).

8. Mr. Loginow's determinations described in Admission 6 established that on April 13 and/or 14, 1995 the Pomona translator was receiving the signal of the Monticello Station "directly through space" as that term is used in Section 74.1231(b) of the Commission's Rules, 47 CFR Section 74.1231(b).

9. Mr. Loginow's determinations described in Admission 6 established that on April 13 and/or 14, 1995, the Fort Lee translator and the Pomona translator were operating in compliance with Section 74.1231(b) of the Commission's Rules, 47 CFR Section 74.1231(b).

10. The Bureau's responses in Admissions 6,7,8, and 9 are inconsistent with assertions in paragraphs 7 and/or 8 of the HDO.

11. On April 13 and/or 14, 1995, Mr. Loginow observed that the Monticello Station was operating with reduced power.

12. Operation of the Monticello Station at reduced power on April 13 and/or 14, 1995, could affect the quality of signal received at the Fort Lee translator and/or the Pomona translator and therefore affect the received audio quality.

13. A return to fully authorized operating power by the Monticello Station could result in improved audio quality received at the Fort Lee translator and/or the Pomona translator.

14. During the May 15, 1995 inspection and/or testing conducted by Mr. Loginow related to the Proceeding, Mr. Loginow transmitted a signal from the top floor of the building at which the Fort Lee translator's equipment is located at a frequency of 951 MHz which was intended by Mr. Loginow to be received by equipment at the Fort Lee translator.

15. The signal referred to in Admission 14 was intended to, and/or reasonably could have, interrupted all transmissions then occurring on WMG499.

16. On May 15, 1995, Mr. Loginow did not know specifically the location of the Fort Lee translator receiving equipment which was actually tuned to receive the Pomona translator's frequency on 94.3 MHz.

17. On May 15, 1995, Mr. Loginow did not know specifically the location of the Fort Lee translator receiving equipment which was actually tuned to receive the Monticello Station's frequency on 99.7 MHz.

18. Mr. Loginow had never closely and/or directly inspected the facilities and equipment at the Fort Lee translator and the Pomona translator by entry into the enclosures to observe the transmitters, receivers, remote control and power apparatus before August 2, 1995 (*i.e.* prior to August 2, 1995, the only inspections and/or observations were entirely from outside of those FM translators).

19. On July 31, 1995, Mr. Loginow determined by observation and/or testing that WMG499 was not in operation.

20. On July 31, 1995, Mr. Loginow considered that the Fort Lee translator could not be

receiving programming off the air from the Pomona translator because he considered the audio quality of the Fort Lee translator's transmissions on 103.1 MHz to be too high to be consistent with audio reception off the air from the Pomona translator.

21. Mr. Loginow conducted no tests on July 31, 1995, to support his conclusion that the Fort Lee translator could not be receiving programming off the air from the Pomona translator.

22. Mr. Loginow assumed on July 31, 1995, that Jukebox Radio programming was being delivered to the Fort Lee translator by "alternate means, presumably via telephone lines" due to his personal observation of audio quality of the Fort Lee translator transmissions on 103.1 MHz.

23. On July 31, 1995, Mr. Loginow never observed any "alternate means" (*i.e.* means other than off the air reception) by which Jukebox Radio programming could be delivered to the Fort Lee translator, including, but not limited to, the use of telephone lines.

24. A significant basis for Mr. Loginow's assumption on July 31, 1995, that the Fort Lee translator could not be receiving programming off the air from the Pomona translator, was that he considered the quality of the audio transmissions from the Fort Lee translator on 103.1 MHz to be higher than what he observed and/or tested in April 1995.

25. Mr. Loginow again monitored the Fort Lee translator on August 2, 1995.

26. On August 2, 1995, Mr. Loginow observed and/or tested very high quality audio transmissions from the Fort Lee translator on 103.1 MHz.

27. The Fort Lee translator transmission quality on 103.1 MHz observed by Mr. Loginow on August 2, 1995, was the same as and/or substantially similar to the audio transmission quality on 103.1 MHz Mr. Loginow observed on July 31, 1995.

28. Mr. Turro cooperated fully with Mr. Loginow during his inspections of the Fort Lee

translator and the Pomona translator on August 2, 1995.

29. On August 2, 1995, Mr. Loginow determined that the Fort Lee translator was receiving Jukebox Radio programming off the air from the Pomona translator and that the Pomona translator was receiving Jukebox Radio programming off the air from the Monticello Station.

30. On August 2, 1995, Mr. Loginow determined that the Fort Lee translator had the ability to receive the transmissions of the Monticello Station's signal, 99.7 MHz, directly off the air.

31. Mr. Loginow observed the use of filters at the Fort Lee translator and the Pomona translator during his inspections on August 2, 1995.

32. Mr. Loginow and/or the Bureau have no knowledge of when the filters Mr. Loginow observed on August 2, 1995 were installed.

33. The filters Mr. Loginow observed at the Fort Lee translator and/or the Pomona translator on August 2, 1995, were:

(a) used for reception purposes in connection with the Pomona translator signal at 94.3 MHz

(b) not used for reception purposes of the Monticello Station signal at 99.7 MHz at the Fort Lee translator.

34. On August 2, 1995, Mr. Loginow observed no programming delivery mechanism in use at either the Fort Lee translator or at the Pomona translator other than reception of signals directly off the air, with the Fort Lee translator receiving Jukebox Radio programming off the air from the Pomona translator and that the Pomona translator receiving Jukebox Radio

programming off the air from the Monticello Station.

35. Mr. Loginow determined that on August 2, 1995 the Fort Lee translator was receiving the signal of the Pomona translator "directly through space" as that term is used in Section 74.1231(b) of the Commission's Rules, 47 CFR Section 74.1231(b).

36. Mr. Loginow determined that on August 2, 1995 the Pomona translator was receiving the signal of the Monticello Station "directly through space" as that term is used in Section 74.1231(b) of the Commission's Rules, 47 CFR Section 74.1231(b).

37. Mr. Loginow determined that on August 2, 1995, the Fort Lee translator and the Pomona translator were operating in compliance with Section 74.1231(b) of the Commission's Rules, 47 CFR Section 74.1231(b).

38. The Bureau's responses in Admissions 34,35,36, and 37 are inconsistent with assertions in paragraphs 7 and/or 8 of the HDO.

39. By letter dated November 19, 1991, Roy J. Stewart, Chief, Mass Media Bureau, specifically informed Mr. Turro that the Commission's rules and policies would not prohibit Mr. Turro from purchasing broadcast airtime from a commercial FM station through a time brokerage agreement and then rebroadcasting that "primary station" on the Fort Lee translator licensed to him, which would be outside of the primary contour of primary station being rebroadcast, and that the translator licensee could solicit advertisements to be aired during the brokered time to support the programming presented, so long as: the time brokerage contract would be kept at the primary station and made available for Commission inspection upon request per Section 73.3613(d) of the Commission's rules; there would be a bona fide, arms-length transaction between the primary station and the translator; the licensee of the translator station

would pay the primary station a rate charge comparable to the amount charged other purchasers of brokered airtime, or an amount consistent with such charges in the local broadcast community; and at no time would the translator station receive financial support, directly or indirectly, from the primary station to cover the costs associated with the operation and maintenance of the translator station.

40. Attachment A hereto is a true, complete and genuine copy of the November 19, 1991, letter of Roy J. Stewart, Chief, Mass Media Bureau, directed to Mr. Turro's counsel, Ranier K. Kraus.

41. Attachment B hereto is a true, complete and genuine copy of the July 8, 1997 letter of Roy J. Stewart, Chief, Mass Media Bureau, and the enclosures therewith, directed to Mr. Turro's counsel, Charles R. Naftalin.

42. Attachment C hereto is a true, complete and genuine copy of the August 1, 1995, e-mail from Serge Loginow, Jr. to Stephen Barone concerning Mr. Loginow's July 31, 1995 inspections and/or observations and/or conclusions and/or determinations in the Proceeding.

43. Attachment D hereto is a true, complete and genuine copy of the August 4, 1995, e-mail from Serge Loginow, Jr. to Stephen Barone concerning Mr. Loginow's August 2, 1995 inspections and/or observations and/or conclusions and/or determinations in the Proceeding.

44. The HDO makes no reference to Mr. Loginow's inspections and/or observations and/or conclusions and/or determinations concerning the Fort Lee translator and/or the Pomona translator and/or the Monticello Station with respect to the:

(a) April 13 and 14, 1995, determinations of Mr. Loginow that the Fort Lee translator was receiving the signal of the Pomona translator off the air

(b) April 13 and/or 14, 1995, determinations of Mr. Loginow that the Pomona translator was receiving the signal of the Monticello Station off the air

(c) July 31, 1995, activities of Mr. Loginow

(d) August 2, 1995, activities of M. Loginow.

45. The allegations in the HDO do not rely on Mr. Loginow's inspections and/or observations and/or conclusions and/or determinations concerning the Fort Lee translator and/or the Pomona translator and/or the Monticello Station with respect to the:

(a) April 13 and 14, 1995, determinations of Mr. Loginow that the Fort Lee translator was receiving the signal of the Pomona translator off the air

(b) April 13 and/or 14, 1995, determinations of Mr. Loginow that the Pomona translator was receiving the signal of the Monticello Station off the air

(c) July 31, 1995, activities of Mr. Loginow

(d) August 2, 1995, activities of M. Loginow.

46. Mr. Loginow took notes, or otherwise recorded his observations in writing, in Mr. Turro's presence during the course of Mr. Loginow's August 2, 1995 activities related to the Proceeding.

47. A formal complaint dated February 15, 1995, was filed with the Commission by Universal Broadcasting of New York, Inc. ("Universal") which alleged substantially the same violations of the Commission's rules and policies which are set forth in the HDO.

48. At the request of Universal, the Commission did not provide Mr. Turro with notice of the February 15, 1995, complaint filed by Universal.

49. At the request of Universal, the Commission attempted to keep Universal's February

15, 1995 complaint confidential.

50. The allegations in Universal's February 15, 1995 complaint caused, or substantially caused, the Commission to investigate Mr. Turro and broadcast activities associated with him.

51. The allegations in Universal's February 15, 1995 complaint caused, or substantially caused, the Commission to send a letter of inquiry dated June 21, 1995, to Mr. Turro.

52. The allegations in Universal's February 15, 1995 complaint caused, or substantially caused, the Commission to direct Mr. Turro to divest himself of his ownership interests in the Fort Lee and the Pomona translators.

53. The Commission did not direct notice to Mr. Turro of Universal's February 15, 1995 complaint until after the release of the HDO.

54. The Commission relied upon allegations in Universal's February 15, 1995 complaint in conducting its investigations of Mr. Turro in the Proceeding.

55. The Commission relied upon allegations in Universal's February 15, 1995 complaint in drafting and releasing the HDO.

56. Subsequent to the filing of Universal's February 15, 1995 complaint, Universal provided information and/or allegations related to the Proceeding which the Commission relied upon in conducting its investigation of Mr. Turro in the Proceeding.

57. Subsequent to the filing of Universal's February 15, 1995 complaint, Universal provided information and/or allegations related to the Proceeding which the Commission relied upon in drafting and releasing the HDO.

58. The HDO would not have been drafted and released but for Universal's February 15, 1995 complaint and/or subsequent information and/or allegations provided by Universal related

to the Proceeding.

59. Even if the HDO have been drafted and released it would have been substantially different but for Universal's February 15, 1995 complaint and/or subsequent information and/or allegations provided by Universal related to the Proceeding.

60. Mr. Turro would not have been directed by the Commission to divest his ownership interests in the Fort Lee translator and the Pomona translator but for Universal's February 15, 1995 complaint and/or subsequent information and/or allegations provided by Universal related to the Proceeding.

61. The Commission received the August 9, 1995 Statement of Vincent Luna and the August 10, 1995 Statement of William Gaghan from Universal sometime in 1995 and held them confidential until after the release of the HDO.

62. The Commission had the discretion to provide notice to Mr. Turro of Universal's February 15, 1995 complaint, and/or subsequent information and/or allegations provided by Universal related to the Proceeding, promptly after receipt of them.

63. At no time did the Commission, or part of the Commission, issue a notice of violation against Mr. Turro related to the allegations in the HDO.

64. At no time did the Commission, or part of the Commission, issue a notice of apparent liability against Mr. Turro related to the allegations in the HDO.

65. The Commission did not issue a notice of apparent liability or a notice of violation against Mr. Turro related to the allegations in the HDO at the request of Universal and/or to accommodate Universal's interests.

Respectfully submitted,

GERARD A. TURRO

By: /s/ Alan Y. Naftalin
/s/ Alan Y. Naftalin

By: /s/ Charles R. Naftalin
/s/ Charles R. Naftalin

Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 467-5700

August 8, 1997

His Attorneys

ATTACHMENT A

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

COPY

19 NOV 1991

IN REPLY REFER TO:

8930-AJS

Rainer K. Kraus, Esquire
Koteen & Naftalin
1150 Connecticut Avenue
Washington, D.C. 20036

Dear Mr. Kraus:

This refers to your correspondence of January 31, 1991, and the accompanying January 30, 1991 letter of Gerard Turro, licensee of FM translator station W276AQ, Fort Lee, New Jersey. Mr. Turro requests the Commission to provide an informal declaratory ruling regarding the proposed operation of an FM translator station. In particular, Mr. Turro seeks guidance on whether a licensee of a commercial FM translator station can purchase broadcast airtime on the station it is rebroadcasting ("primary station"). The purchase would be under the following circumstances:

1. The translator would be operating outside of the primary contour of the station being rebroadcast;
2. Pursuant to the Commission's Rules, the primary station would not reimburse the translator station licensee for airtime purchased (the primary station would not provide any financial support to the licensee of the translator);
3. The translator station licensee would purchase the airtime through a time brokerage agreement and would meet the Commission's rules and policies on such agreements; and
4. The translator would solicit advertisements to be aired during the brokered time to support the programming presented.

Specifically, the issue presented by Mr. Turro's request is whether the licensee of a translator station is permitted to enter into a time brokerage contractual arrangement with its primary station, provided that the primary station does not either reimburse the translator station licensee for the purchase of the brokered time or provide financial support for the translator station's operation.

In order to rule on Mr. Turro's request we must first determine the effect such a request would have on our newly revised FM translator rules governing financial support by commercial primary stations (47 C.F.R. § 74.1232

(1990)).¹ Additionally, because airtime for the programming will be purchased through a time brokerage contractual arrangement, we must also give attention to the Commission's Policy Statement on Part-Time Programming, 82 FCC 2d 107 (1980).²

Under § 74.1232(e), an FM translator station whose coverage contour extends beyond the protected contour of the primary station cannot receive any support, before or after construction, either directly or indirectly, from the primary station. This applies to all persons and entities having any interest or connection with the primary station.

With regard to brokerage arrangements between licensees and brokers, such arrangements usually involve the broker as both program producer and commercial salesperson for a time block purchased from the licensee. Our rules only require licensees to keep brokerage contracts at the station and make them available for Commission inspection upon request (47 C.F.R. § 73.3613(d) (1989)).

In view of the specific circumstances presented by Mr. Turro's request, we conclude that his proposed operation would be consistent with the Commission's rules and policies as outlined above. However, this conclusion rests on the following requirements: the time brokerage contract must be kept at the primary station and made available for Commission inspection upon request per § 73.3613(d); there must be a bona fide, arms-length transaction between the primary station and the translator; the licensee of the translator station will have to pay the primary station a rate charge comparable to the amount charged other purchasers of brokered airtime, or an amount consistent with such charges in the local broadcast community; and at no time would the translator station receive financial support, directly or indirectly, from the primary station to cover any costs associated with the operation and maintenance of the translator station.

Accordingly, to the extent indicated above, and in view of the specific circumstances presented, we do not find that Mr. Turro's proposal would be prohibited by the Commission's rules or policies.

Sincerely,


Roy J. Stewart, Chief
Mass Media Bureau

¹ See Report and Order In the Matter of Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, MM Docket No. 88-140, 5 FCC Rcd. 2106 (1990).

² See 47 C.F.R. § 73.4267 (1989).

ATTACHMENT B



Federal Communications Commission
Washington, D.C. 20554

JUL 8 1997

Charles R. Naftalin, Esquire
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue
Washington, D.C. 20036

Dear Mr. Naftalin:

This is in reference to the Freedom of Information Act request (FOIA Control No. 97-155) that you filed on behalf of Gerard A. Turro (Turro).

Turro is the licensee of FM translator stations W276AQ and W232AL, Fort Lee and Pomona, New Jersey, respectively. On April 15, 1997, the Commission designated Turro's license renewal applications for stations W276AQ and W232AL for an evidentiary hearing on issues that included whether these FM translator stations had been operated in contravention of Sections 74.531(c) and 74.1231(b) of the Commission's Rules. See Gerard A. Turro, FCC 97-137, released April 18, 1997. This action stemmed, in part, from the findings made in the course of an earlier on-site inspection of the stations by an engineer from the Commission's Compliance and Information Bureau (CIB). Pursuant to the Freedom of Information Act, 5 U.S.C. Section 552, you seek documents pertaining to the observations and findings of the investigating engineer, as well as any statements obtained by him from former employees of Mr. Turro.

Please be advised that the record systems maintained by CIB and by the Complaints and Investigations Branch of the Mass Media Bureau were examined pursuant to your request. Several documents within the ambit of FOIA 97-155 were discovered and, upon review, none of these documents have been found to warrant withholding pursuant to the Freedom of Information Act. These materials, copies of which are enclosed for your information and use include: (a) statements from two former employees of Mr. Turro that were given to Serge Loginow, Jr., the investigating engineer; (b) an internal routing notation forwarding Mr. Loginow's investigative report to CIB headquarters; and (c) the two-page report with a two-page attachment, which Mr. Loginow prepared based upon his personal observations and the contemporaneous notes he made during his on-site inspection. In this regard it should be noted that upon finalizing the investigative report, Mr. Loginow discarded his personal notes and drafts of the investigative report.

Pursuant to Section 0.470(a)(1) of the Commission's Rules, commercial use requesters, such as yourself, are to be assessed charges that recover the full direct cost of